

AMANDA N. LISKAMM
Director, Consumer Protection Branch
MANU J. SEBASTIAN
SHEILA B. BERMAN
Trial Attorneys
U.S. Department of Justice
Consumer Protection Branch
450 Fifth Street, NW, Suite 6400S
Washington, D.C. 20001
Telephone: (202) 514-0515
Facsimile: (202) 514-8742
Email: Manu.J.Sebastian@usdoj.gov

E. MARTIN ESTRADA
United States Attorney
MACK E. JENKINS
Assistant United States Attorney
Chief, Criminal Division
VALERIE MAKAREWICZ (Cal. Bar No. 229637)
Assistant United States Attorney
Major Frauds Section
1100 United States Courthouse
312 North Spring Street
Los Angeles, California 90012
Telephone: (213) 894-0756
Facsimile: (213) 894-6269
E-mail: Valerie.Makarewicz@usdoj.gov

Attorneys for Plaintiff
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JASON EDWARD THOMAS CARDIFF,

Defendant.

No. 5:23-CR-00021-JGB

**GOVERNMENT'S MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF ITS
OPPOSITION TO DEFENDANT'S MOTION
TO SUPPRESS**

Date: October 21, 2024
Time: 2:00 p.m.
Courtroom: 1

Plaintiff United States of America, by and through its counsel of record, the United States Department of Justice Civil Division Consumer Protection Branch and Trial Attorneys Manu J. Sebastian and Sheila B. Berman, and the United States Attorney for the Central

District of California and Assistant United States Attorney Valerie
L. Makarewicz, hereby submits this Opposition to Defendant's Motion
to Suppress.

Dated: September 23, 2024

Respectfully submitted,

AMANDA LISKAMM
Director
Consumer Protection Branch

E. MARTIN ESTRADA
United States Attorney

/s/
MANU J. SEBASTIAN
SHEILA B. BERMAN
Trial Attorneys

VALERIE MAKAREWICZ
Assistant United States Attorney

Attorneys for Plaintiff
UNITED STATES OF AMERICA

TABLE OF CONTENTS

| | Page (s) |
|--|----------|
| I. INTRODUCTION..... | 1 |
| II. STATEMENT OF FACTS..... | 1 |
| III. LEGAL STANDARDS & ARGUMENT..... | 8 |
| A. Defendant Had No Reasonable Expectation of Privacy Once the Court Appointed a Receiver in Response to Defendant's Misconduct..... | 10 |
| B. The Court Permitted Law Enforcement to Access the Redwood Premises on October 12, 2018..... | 11 |
| C. The Receiver Consented to Searches and Seizures by Law Enforcement and Was Given the Authority By the Court to Do So..... | 13 |
| D. The Independent Source, Inevitable Discovery, Attenuation, and Good Faith Doctrines All Apply If the Court Determines that There Was Any Illegal Conduct by Law Enforcement..... | 16 |
| 1. The FTC Would Have Produced the Documents to DOJ Pursuant to Its Information Sharing Agreement..... | 17 |
| 2. Law Enforcement Would Have Inevitably Discovered the Fraudulent Conduct from the Public Record of the FTC Litigation..... | 17 |
| 3. Attenuation..... | 18 |
| 4. Law Enforcement Acted in Good Faith..... | 19 |
| III. CONCLUSION..... | 20 |

TABLE OF AUTHORITIES

Page(s)

Federal Cases

| | |
|---|--------|
| <i>Birchfield v. North Dakota</i> , 579 U.S. 438 (2016) | 9, 15 |
| <i>Davis v. United States</i> , 564 U.S. 229 (2011) | 19 |
| <i>Hudson v. Michigan</i> , 547 U.S. 586 (2006) | 9 |
| <i>Katz v. United States</i> , 389 U.S. 347 (1967) | 9 |
| <i>Nix v. Williams</i> , 467 U.S. 431 (1984) | 16, 17 |
| <i>Porter v. Sabin</i> , 149 U.S. 473 (1893) | 11 |
| <i>Rakas v. Illinois</i> , 439 U.S. 128 (1978) | 8, 11 |
| <i>Riley v. California</i> , 573 U.S. 373 (2014) | 8 |
| <i>Schneckloth v. Bustamonte</i> , 412 U.S. 218 (1973) | 13, 14 |
| <i>Smith v. Maryland</i> , 442 U.S. 735 (1979) | 8 |
| <i>Thompson v. Phenix Ins. Co.</i> , 136 U.S. 287 (1890) | 11 |
| <i>United States v. Arreguin</i> , 735 F.3d 1168 (9th Cir. 2013) | 9 |
| <i>United States v. Basher</i> , 629 F.3d 1161 (9th Cir. 2011) | 9, 15 |
| <i>United States v. Castillo</i> , 866 F.2d 1071 (9th Cir. 1988) | 9 |
| <i>United States v. Gray</i> , 751 F.2d 733 (5th Cir. 1985) | 10 |

| | | |
|----|---|------------|
| 1 | <i>United States v. Jacobsen,</i> | |
| 2 | 466 U.S. 109 (1984) | 9, 11 |
| 3 | <i>United States v. Job,</i> | |
| 4 | 871 F.3d 852 (9th Cir. 2017) | 9 |
| 5 | <i>United States v. Madison,</i> | |
| 6 | 226 F. App'x 535 (6th Cir. 2007) | 14 |
| 7 | <i>United States v. Payner,</i> | |
| 8 | 447 U.S. 727 (1980) | 11 |
| 9 | <i>United States v. Ramirez-Sandoval,</i> | |
| 10 | 872 F.2d 1392 (9th Cir. 1989) | 17 |
| 11 | <i>United States v. Rosenow,</i> | |
| 12 | 50 F.4th 715 (9th Cir. 2022) | 9 |
| 13 | <i>United States v. Ruiz,</i> | |
| 14 | 428 F.3d 877 (9th Cir. 2005) | 9 |
| 15 | <i>United States v. Setser,</i> | |
| 16 | 568 F.3d 482 (5th Cir. 2009) | 14 |
| 17 | <i>Utah v. Strieff,</i> | |
| 18 | 579 U.S. 232 (2016) | 17, 18, 19 |

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant previously filed an unsuccessful 39-page motion to dismiss the indictment, or in the alternative, to suppress nearly all of the evidence gathered in the investigation, with over 1400 pages of declarations and exhibits. In denying the first motion, this Court was clear in determining that the "Receiver had the authority to permit [a] search." Dkt. No. 79 at 16. The Court also wrote,

"[t]hough the Defendant contends that the Receiver complied with unreasonable requests and implores the Court to agree, he offers no legal authority supporting this characterization. This Court finds no reason to agree with Defendant's position given the broad authority granted to the Receiver by the court in the FTC Action and the obvious legitimacy of that proceeding."

Dkt. No. 79 at 16.

It is not clear why Defendant has filed this motion to suppress. This new filing contains no new information: it makes the same argument using the same exhibits and more of the same "self-servicing distinction[s]." *Id.* at 13, n. 4. Accordingly, the Court should reject Defendant's second bite of the apple and again deny Defendant's motion to suppress.

II. STATEMENT OF FACTS

On August 11, 2017, the Federal Trade Commission ("FTC") served a Civil Investigative Demand ("CID") to Redwood Scientific Technologies, Inc. ("Redwood"), addressed to Defendant as Redwood's President and CEO. Dkt. No. 79 at 2 (citing *FTC v. Redwood Scientific Technologies, Inc.*, Case No. 2:17-cv-07921-SJO (C.D. Cal. 2017), Dkt. No.1). This CID required a response by September 6, 2017. *FTC v. Redwood*, Dkt.

1 No. 1 at 2:12-15. Redwood's counsel acknowledged receipt of the
2 CID on August 15, 2017. *Id.* at 4:7-10. However, Defendant not
3 only ignored the initial response deadline, but neglected to
4 meet three separate deadlines proposed by Redwood's own counsel
5 (October 5, 12, 19). *Id.* After repeated instances of non-
6 compliance, the FTC petitioned the District Court for an Order
7 Enforcing Civil Investigative Demand on October 30, 2017, as
8 "Redwood's failure to comply with the August 3, 2017, [sic] CID
9 has materially impeded the Commission's ongoing investigation."
10 *Id.* at 6.

11 On January 25, 2018, the District Court entered an order
12 compelling compliance with the CID and ordered production of
13 "information, documents, and tangible items responsive to the
14 CID on or before Friday, February 9, 2018" in response to the
15 parties' stipulation for such an order. *FTC v. Redwood*, Dkt. No.
16 17. Redwood again failed to meet the deadline and comply with
17 the Court's enforcement order. *FTC v. Redwood*, Dkt. No. 18.
18 Redwood's counsel claimed material was sent via FedEx but could
19 not provide the tracking number and then ignored further
20 communication from the FTC regarding compliance with the order.
21 *Id.*

22 On March 20, 2018, the Court ordered Redwood to show cause as to
23 why the Court should not find Redwood in contempt for failure to
24 comply with the Court's January 25 Order. *FTC v. Redwood*, Dkt. No.
25 20. Redwood sent materials to the FTC on March 22, 2018, and April 9,
26 2018, "representing that the productions represented full and
27 complete compliance with the CID." *FTC v. Redwood*, Dkt. No. 24.
28 Because the so-called complete production only included 26 documents

1 in the first production and 14 documents, plus a set of 41 consumer
2 emails in the second production, the FTC contacted Redwood's counsel
3 for the missing material *Id.* On April 16, 2018, Redwood's counsel
4 claimed that the company had recently recovered its internal emails
5 and would produce those emails to the FTC. *Id.* Redwood, however,
6 continued to fail to fully comply with the CID for the next two
7 months and the Court again ordered Redwood to turn over additional
8 documentation to the FTC on June 12, 2018. *FTC v. Redwood*, Dkt. No.
9 29. Defendant continued to defy the CID and the Court orders and
10 again produced limited documentation to the FTC. *FTC v. Redwood*, Dkt.
11 Nos. 30-44. The material produced, however, provided enough evidence
12 of Defendant's misconduct that the FTC determined a temporary
13 restraining order was necessary.

14 In a memo dated August 21, 2018, the FTC notified USPIS that the
15 FTC intended to file a complaint and *ex parte* temporary restraining
16 order ("TRO") requesting the court appoint a receiver. Def. Supp.
17 Mot. Ex. A-7. On October 3, 2018, the FTC lodged an action against,
18 among others, Redwood, Defendant, and Defendant's wife under seal.
19 *FTC v. Jason Cardiff, et al.*, Case No. 5:18-cv-02104-DMG (C.D. Cal.
20 2018), Dkt. No.1. Due to the Defendant's non-compliance with the CID
21 and the court orders, and based on the Defendant's fraudulent
22 conduct, the FTC also filed under seal an *ex parte* application for a
23 temporary restraining order and order to show cause why a preliminary
24 injunction should not issue. *Id.*, Dkt. No. 3. The evidence presented
25 by the FTC not only indicated that the Defendant made unsubstantiated
26 claims about the products he sold, but also, among other things, that
27 he committed credit card fraud while being investigated by the FTC
28 and even after the FTC moved to hold the Defendant in contempt. *Id.*,

1 Dkt. No. 5.

2 Most brazenly, when Defendants decided earlier
3 this year that they needed more money, they took
4 the stored debit and credit card information of
5 consumers who had made only a one-time purchase
6 (i.e., a "straight" sale), and simply processed
7 further charges on those cards - sometimes over a
8 year after the consumer's purchase. Defendant's
9 records show that Jason Cardiff directed his
10 employees to initiate these charges, that Danielle
11 Cadiz worked with employees to make it happen, and
12 that Defendants successfully processed
13 unauthorized charges for at least 1,893 consumers.
14 Defendants chose to do this (January 22, 2018 -
15 April 6, 2018) while the FTC's CID enforcement
16 action was ongoing, and even continued after the
17 Commission moved in March 2018 for Redwood to be
18 held in contempt.

11 *Id.* at 9:4-14.

12 On October 5, 2018, and October 10, 2018, a USPS postal
13 inspector conducted surveillance of the Redwood business locations in
14 preparation for the TRO. *Id.* at Ex. A-8. On October 5, 2018, the
15 postal inspector walked through the publicly-accessible areas of the
16 two office buildings to determine the layout of the buildings and to
17 learn more about the number of employees that may be in the
18 locations. *Id.* Her detailed Memo to File does not state that she
19 attempted to gain access to the offices as the Defendant repeatedly
20 contends. *Id.*; see Def. Supp. Mot. §6; see also Dkt. No. 45 at 6:21-
21 22. Rather, the memo clearly states that she "conducted surveillance"
22 by entering the publicly-accessible area of the office building to
23 Suite 100 and observed the office door was closed. *Id.* Then, she left
24 that building, walked over to the other building, and walked past
25 Suites 115 and 118, where she saw an individual in the hallway. *Id.*
26 On October 10, 2018, the postal inspector went back to the Redwood
27 business locations and observed a Bentley belonging to the
28

1 Defendant's wife. *Id.* The postal inspector detailed the person and
2 the vehicle that she saw as she conducted surveillance of the
3 offices. *Id.*

4 The Court issued the temporary restraining order on October 10,
5 2018, and appointed Robb Evans & Associates, LLC. as the receiver
6 ("Receiver") to, among other things: (1) assume full control of the
7 Receivership Entities by removing, as the Receiver deems necessary or
8 advisable, persons associated with any Receivership Entity¹; (2) take
9 exclusive custody, control, and possession of assets and documents
10 of, or in the possession, custody, or under the control of, any
11 Receivership Entity and assets of Jason Cardiff and Eunjung Cardiff;
12 (3) take exclusive custody, control, and possession of 26 valuable
13 articles, including, but not limited to, a \$532,000 diamond ring and
14 a \$102,076 diamond ring; and (4) take all steps necessary to secure
15 and take exclusive custody of each location from which the
16 Receivership Entities operate their business. *Id.*, Dkt. No. 29 at 19-
17 23. In securing and taking custody of the business locations, the
18 Receiver was permitted to require any persons present at the location
19 to leave and ensure that such persons were not removing from the
20 premises documents or assets of the Receivership Entities. *Id.* at
21

22 ¹ The TRO defines "Receivership Entities" as the Corporate
23 Defendants as well as any other entity that has conducted any
24 business related to Defendant's marketing and sale of dissolvable
25 film strips and promotion of the Rengalife multilevel marketing
26 program, including receipt of Assets derived from any activity that
27 is the subject of the Complaint in this matter, **and that the Receiver**
28 **determines is controlled or owned by any Defendant.**" See Def Supp.
Mot. Ex. A-10 (emphasis added). "Corporate Defendants" is defined as
Redwood Scientific Technologies, Inc. (California), Redwood
Scientific Technologies, Inc. (Nevada), Redwood Scientific
Technologies, Inc. (Delaware), Identify, LLC, Advanced Men's
Institute Prolongz LLC, Run Away Products, LLC, and Carols Place
Limited Partnership, and each of their subsidiaries, affiliates,
successors, and assigns. *Id.*

1 23:1-16. The Court explicitly allowed law enforcement personnel to
2 "assist the Receiver in implementing these provisions in order to
3 keep the peace and maintain security." *Id.* In addition, the Court
4 authorized law enforcement to use "any necessary and reasonable
5 force." *Id.*

6 On October 12, 2018, the Receiver, the FTC, USPS postal
7 inspectors, and local law enforcement officers met at the Upland
8 Police Department to discuss the operation plan for the execution of
9 the TRO ("immediate access") on the Receivership Entities and office
10 locations. *See Exhibit 1, Decl. of USPS Postal Inspector Jeffrey*
11 *Hedrick.* Postal inspectors were asked to provide support for the
12 receiver and the FTC and ensure their safety during the immediate
13 access. *Id.* Once at the Receivership Entities' office locations,
14 Brick Kane, President of the court-appointed Receiver, made entry
15 first and was followed by the USPS postal inspectors and the FTC
16 employees. *Id.* Postal inspectors accompanied employees of the
17 Receiver and the FTC employees through the various offices to provide
18 security as the employees of the Receiver and FTC employees reviewed
19 and collected documents and Kane interviewed the Receivership Entity
20 employees. *Id.* Law enforcement did not conduct a search of the
21 Redwood premises that day, nor did postal inspectors seize any
22 material. *Id.*

23 On October 18, 2018, a USPS postal inspector requested and
24 received consent from the Receiver to enter the Receivership Entities
25 business locations to review and collect evidence relating to
26 suspected mail fraud. Def. Supp. Mot. Ex. A-12. Specifically, Kane
27 consented to USPS postal inspectors and forensic computer analysts
28 inspecting the location, photocopying and/or photographing items, and

1 imaging computers. *Id.* Then, on October 22, 2018, Jacklin Dadbin, an
2 employee of the Receiver, accompanied the USPIS team through the
3 Receivership Entities' business locations and provided USPIS access
4 to two of the Receivership Entities' computers, as well as some paper
5 files. *Id.* Most of the material collected by USPIS that day pertained
6 to People United for Christians ("PUFC"), a religious ministry that
7 claimed Defendant was the "Master Prophet." *Id.*; *See Id.*, Ex. A-17 at
8 13. The Receiver determined that the "operations of [Redwood] and
9 PUFC are intertwined and comingled" and as such, the material was
10 turned over to USPIS by the Receiver. *Id.*, Ex. A-17 at 13. This is
11 also evidenced in the Receiver's Employee Questionnaires and
12 interview notes gathered from the Receivership Entities' employees
13 that were present during the immediate access. *See* Def. Supp. Mot. A-
14 15.

15 On May 26, 2020, the Receiver signed a privilege waiver related
16 to the Receivership Entities. *Id.* On June 23, 2020, the Receiver
17 provided DOJ with a Stored Communications Act Consent form agreeing
18 to disclose all wire or electronic communications and all records or
19 other information stored by any remote computer service or electronic
20 communications service. *Id.* at A-16. Such consent granted law
21 enforcement access to third-party stored data like the Receivership
22 Entities' customer relationship management ("CRM") data held by
23 Sticky.io formerly known as Limelight CRM. On August 18, 2020, the
24 Receiver agreed to voluntarily produce a forensic image of the
25 Receivership Entities' Google Suite Account and on August 26, 2020,
26 the Receiver consented to voluntarily produce a copy of the
27 Receivership Entities' QuickBooks data. Dkt. 45, Ex. 61 and 63.

1 On July 2, 2021, the Receiver granted USPIS employees permission
2 to access a storage unit that contained material collected by the
3 Receiver and review its content. *Id.* at Ex. A-11. The Receiver also
4 consented to USPIS searching a computer that was in the Receivership
5 Entities' Chief Operations Officer's ("COO") possession for evidence
6 of mail and wire fraud. *Id.* The COO voluntarily turned the laptop
7 over to USPIS on July 1, 2021, and she also signed a USPIS Consent to
8 Search Electronic Devices form since she kept the computer for
9 personal use for over three years after she left her employment. *Id.*
10 On July 6, 2021, USPIS met with staff from the Receiver and was
11 provided with a photo of the storage unit and the executed USPIS
12 Consent to Search Electronic Devices form related to the COO's
13 laptop. *Id.*; See also *Id.* at A-13. Then, Receiver employee Manny Chen
14 accompanied USPIS to the storage unit and remained there as USPIS
15 reviewed the various material in the unit. *Id.* at A-11. USPIS made
16 notations regarding the material in the unit but did not document
17 every single document nor did USPIS seize any material from the
18 storage unit. *Id.*

19 **III. LEGAL STANDARDS & ARGUMENT**

20 Defendant bears the burden to establish that his own Fourth
21 Amendment rights were violated. *Rakas v. Illinois*, 439 U.S. 128, 130
22 n.1 (1978). Under the Supreme Court's two-part test, Defendant must
23 establish that: (1) he had a subjective expectation of privacy in the
24 area searched; and (2) that society is prepared to recognize that
25 expectation of privacy as reasonable. *Smith v. Maryland*, 442 U.S.
26 735, 740 (1979). If Defendant does not establish both parts of the
27 test, then a search did not occur.

1 Moreover, a warrantless search or seizure is reasonable if it
2 falls within a specific exception to the warrant requirement. See
3 *Riley v. California*, 573 U.S. 373, 382 (2014). The government bears
4 the burden of establishing that an exception applies. *United States*
5 *v. Job*, 871 F.3d 852, 860 (9th Cir. 2017). One such exception is
6 consent. It is well established law that a search to which an
7 individual consents is reasonable. *Katz v. United States*, 389 U.S.
8 347, 358 n.22 (1967). Law enforcement may obtain consent from the
9 owner or a third party with shared use and joint access to or control
10 over the searched area. *United States v. Arreguin*, 735 F.3d 1168,
11 1174 (9th Cir. 2013). Such consent may be express or implied.
12 *Birchfield v. North Dakota*, 579 U.S. 438, 476 (2016); *United States*
13 *v. Basher*, 629 F.3d 1161, 1167-68 (9th Cir. 2011). Consent may also
14 be verbal and does not need to be written. *United States v. Castillo*,
15 866 F.2d 1071, 1082 (9th Cir. 1988). An individual who law
16 enforcement reasonably believes has apparent authority may also
17 provide consent, even if the person does not actually have authority
18 to consent. *United States v. Ruiz*, 428 F.3d 877, 880-82 (9th Cir.
19 2005).

20 The Fourth Amendment only protects against unlawful government
21 action. *United States v. Jacobsen*, 466 U.S. 109, 113-14 (1984). The
22 Supreme Court has stressed that suppression of evidence should be
23 "our last resort, not our first impulse." *Hudson v. Michigan*, 547
24 U.S. 586, 591 (2006). Importantly, suppression is appropriate only if
25 a Fourth Amendment violation is the but-for cause of the government
26 obtaining the challenged evidence. *United States v. Rosenow*, 50 F.4th
27 715, 736-37 (9th Cir. 2022). Even if the Court determines that there
28 was a search or seizure that violates the Fourth Amendment, the

1 evidence may still be admitted under the following doctrines: (1)
2 inevitable discovery; (2) independent source; (3) attenuation; and
3 (4) good faith.

4 **A. Defendant Had No Reasonable Expectation of Privacy Once the**
5 **Court Appointed a Receiver in Response to Defendant's**
6 **Misconduct.**

7 As this Court found, the Receiver was appointed "to ensure that
8 the Defendant and his co-defendant wife could not continue their
9 fraudulent behavior through their business during the pendency of the
10 FTC Action." Dkt. No. 79 at 14. In the District Court's order
11 appointing the Receiver, the Court found good cause existed to give
12 the Receiver "exclusive custody, control, and possession of all
13 Assets and Documents of, or in the possession, custody, or under the
14 control of, any Receivership Entity and all Assets of Jason Cardiff
15 and Eunjung Cardiff." Dkt. No. 45, Ex. 13 at 4. Further, the Court
16 granted the Receiver broad discretion to "[c]onserve, hold, manage,
17 and prevent the loss of all Receivership Property, and perform all
18 acts necessary or advisable to preserve the value of those Assets."
19 Dkt. No. 45, Ex. 13, at 4, 18-20. The Court explicitly granted the
20 Receiver "full powers" to effectuate the mandate by the Court,
21 including, *inter alia*, allowing the FTC access to the premises of the
22 Receivership Entities, giving the Receiver the ability to authorize
23 inspection and copying of books, records, documents and other
24 materials, and authorizing the Receiver to cooperate with "any state
25 or federal civil or criminal law enforcement agency." Dkt. No. 45,
26 Ex. 13, at 18-25.

27 Once custody, control, and possession of the assets and
28 documents passed to the Receiver, Defendant no longer maintained a
reasonable expectation that the Receivership Property would remain

1 private. *United States v. Gray*, 751 F.2d 733, 737 (5th Cir. 1985).
2 Since a "defendant's Fourth Amendment rights are violated only when
3 the challenged conduct invaded his legitimate expectation of
4 privacy," Defendant's challenge to USPIS evidence collection while
5 the Receiver was in place should fail. *United States v. Payner*, 447
6 U.S. 727, 743 (1980); *Rakas v. Illinois*, 439 U.S. 128, 143 (1978).

7 Moreover, the evidence obtained after the appointment of the
8 Receiver does not constitute a "seizure" under settled law. "Seizure
9 of property occurs when there is some meaningful interference with an
10 individual's possessory interest in that property." *United States v.*
11 *Jacobsen*, 466 U.S. 109, 113 (1984). At the time of USPIS' presence at
12 the Receivership Entity premises, Defendant did not have a present
13 possessory interest in the property; rather, it was the court,
14 through the Receiver, that retained the present possessory interest
15 in the Receivership Property. *Thompson v. Phenix Ins. Co.*, 136 U.S.
16 287, 297 (1890); see *Porter v. Sabin*, 149 U.S. 473, 479 (1893) ("The
17 possession of the receiver is the possession of the court; and the
18 court itself holds and administers the estate through the receiver,
19 as its officer, for the benefit of those whom the court shall
20 ultimately adjudge to be entitled to it.").

21 **B. The Court Permitted Law Enforcement to Access the Redwood**
22 **Premises on October 12, 2018.**

23 In its October 10, 2018 TRO, the Court explicitly permitted law
24 enforcement to attend the immediate access conducted by the Receiver.
25 The Court wrote, "Law enforcement personnel, including, but not
26 limited to, police or sheriffs, may assist the Receiver in
27 implementing these provisions in order to keep the peace and maintain
28 security." Dkt. No. 107-1 at 61:11-14.

1 As Defendant acknowledges, Redwood Scientific Technologies
2 Inc.'s business premises included three locations: 1) Suite 100 of
3 820 North Mountain Ave., Upland, CA 91786; 2) Suite 115 of 870 North
4 Mountain Ave., Upland, CA 91786; and 3) Suite 118 of 870 North
5 Mountain Ave., Upland, CA 91786. In addition, the FTC believed there
6 would be 15-20 people working at the three business locations. Def.
7 Supp. Mot. Ex. 7 at 27. The presence of six USPIS inspectors and two
8 local law enforcement "to keep the peace and maintain security" of
9 three locations with 15-20 people during the unannounced execution of
10 a temporary restraining order is reasonable. Moreover, law
11 enforcement did not "pick up and review documents, examine items,
12 access computers, [or] move about without any oversight or
13 limitations" as Defendant contends. Def. Supp. Mot. at 2:15-16. To
14 the contrary, the Receiver made clear that law enforcement's role was
15 to support to the Receiver, and law enforcement acted accordingly.
16 See Ex. 1. In fact, the Receiver oversaw the entire event and led the
17 entry into the premises. *Id.* Importantly, law enforcement never
18 seized any material on October 12, 2018, as Defendant claims in
19 another self-serving affidavit.² Def. Supp. Mot. Ex. B. ¶5, 9.

20 Defendant also makes numerous contradictory statements across
21 his motions. First, he claimed the government and the court-appointed
22 Receiver were engaged in a "years-long clandestine and joint criminal
23 investigation." Dkt. No. 45 at 1:3-8. Now that he has lost that
24 argument, Defendant claims, "the absence of any notes or
25

26 ² The Memo to File that Defendant references is USPIS' review of
27 items the Receiver collected and kept within a storage unit
28 controlled by the Receiver. Def. Supp. Mot. Ex. B. ¶5. The Receiver
provided USPIS access to this material for the first time on July 6,
2021, not during the October 12, 2018 immediate access as Defendant
implies. *Id.*; See Def. Supp. Mot. Ex. A-11.

1 documentation is fatal to the idea that the initial entry or
2 subsequent entry on October 22, 2018, by criminal law enforcement
3 agents onto Redwood's premises was authorized by the Receiver or by a
4 court." Def. Supp. Mot. at 13:5-8.

5 The contradictory statements are also found within Defendant's
6 sworn declarations. In Defendant's April 8, 2024 Declaration, he
7 claims that he "was unaware that [he] was under [this] federal
8 criminal investigation during the pendency of the FTC Action." Dkt.
9 No. 45-1 ¶15. However, his September 9, 2024 Declaration makes it
10 clear that he was aware of a possible criminal investigation on
11 October 12, 2018, when he saw "Upland Police Department and agents
12 from [USPIS]" inside the Receivership Entity premises. Def. Supp.
13 Mot. Ex. B. ¶4.

14 Law enforcement's presence at the immediate access was permitted
15 by the Court; the Receiver was aware, consented, and provided
16 instructions regarding their role; and law enforcement did not seize
17 any material on October 12, 2018. Even if the Court determines that
18 USPIS' security presence during the immediate access was a search,
19 such a search was permitted because the Court authorized it in a
20 temporary restraining order after a finding that Defendant had
21 committed fraud. See Def. Supp. Mot. Ex. A-10.

22 **C. The Receiver Consented to Searches and Seizures by Law**
23 **Enforcement and Was Given the Authority By the Court to Do**
24 **So.**

25 "Consent searches are part of the standard investigatory
26 techniques of law enforcement agencies." *Schneckloth v. Bustamonte*,
27 412 U.S. 218, 231 (1973). Such consent can be either express or
28 implied. *Id.* at 227, 248. As this Court has already determined, the
Receivers actions "comport with the court order in the FTC Action and

1 evidence nothing more than the Receiver discharging its obligations
2 to allow reasonable access to the Receivership entities' premises and
3 documents." Dkt. No. 79 at 16. Moreover, as Defendant admits in his
4 motion, the Receiver consented to both the October 22, 2018 seizure
5 by law enforcement and the July 6, 2021 search by law enforcement.
6 Def. Supp. Mot. ¶¶ 31, 35. However, contrary to Defendant's
7 assertions, law enforcement was not required to advise the Receiver
8 that it had a right to refuse to consent. Def. Supp. Mot. ¶ 30; see
9 *Bustamonte*, 412 U.S. at 231.

10 The Receiver was explicitly authorized to access and exert
11 control over all the assets and records of the Receivership Entities
12 and of Defendant, and to take any action which could have been taken
13 by any defendant with respect to those assets and records, which
14 included allowing or consenting to a search of the Receivership
15 Premises and/or copying or seizure of Receivership records. See
16 *United States v. Setser*, 568 F.3d 482, 491 (5th Cir. 2009) ("After
17 appointment, the receiver was 'vested with complete jurisdiction and
18 control' of the property and had the 'right to take possession' of
19 it.... The receiver was required to 'manage and operate the property
20 ... in the same manner' as its original owner.... The receiver became
21 the possessor, and as such could consent to the search of the seized
22 documents."); *United States v. Madison*, 226 F. App'x 535, 542 (6th
23 Cir. 2007) (court ordered the receiver to "[t]ake exclusive custody,
24 control and possession of all ... effects, books and records of
25 account and other papers and property or interests owned or held by
26 the [companies] ... with full power to ... receive and take
27 possession of such receivership properties" and, thus, the receiver
28

1 exercised the [companies'] own authority, and had the authority to
2 consent to the FBI agent's search of the premises).

3 Brick Kane from the Receiver's office not only provided verbal
4 consent on behalf of the Receiver to USPIS agents, but also had a
5 representative from the Receiver accompany USPIS personnel each time
6 they entered the Receivership Entities' locations or viewed and/or
7 collected material from the Receivership Entities. See Def. Supp.
8 Mot. Ex. A-11 at 1 and Ex. A-12 at 1. Specifically, Kane accompanied
9 USPIS personnel on October 12, 2018, when the Receiver first took
10 control of the Receivership Entities' locations. See Ex. 1. Jacklin
11 Dadbin from the Receiver's office accompanied USPIS personnel on
12 October 22, 2018.³ Def. Supp. Mot. Ex. A-12 at 1. Manny Chen from the
13 Receiver's office accompanied USPIS personnel on July 6, 2021. *Id.* at
14 Ex. A-11 at 1. Such consent is more than sufficient as the Fourth
15 Amendment does not require written documentation to evidence consent
16 as Defendant claims. *Birchfield v. North Dakota*, 579 U.S. at 476;
17 *United States v. Basher*, 629 F.3d at 1167-68.

18 In addition, in accordance with its responsibilities and duties,
19 the Receiver provided law enforcement with material that it
20 determined may be evidence of criminal activity after conducting
21 interviews with Defendant's employees. Dkt. No. 45, Ex. 14, p.12-24.
22 For example, during the immediate access, the Receiver found a room
23

24 ³ Defendant claims "There is no record that the Receiver
25 actually gave consent for the October 22, 2018 search." Def. Supp.
26 Mot. ¶ 31. Statements like these are patently false as there is a
27 Memorandum of Activity that Defendant himself included in his motion
28 indicating that the Receiver gave consent. Def. Supp. Mot. Ex. A-12.
Further, as Defendant himself admits in both his motion and his
declaration, the Redwood premises were locked and the public had no
access. Def. Sup. Mot. Ex. B. ¶5. Accordingly, USPIS could not even
gain entry to the office location without a representative from the
Receiver consenting and allowing USPIS access to the premises.

1 with boxes containing material related to a mailing operation where
2 Defendant sent letters from a "Master Prophet" and collected over
3 \$1,525,000 in donations. *Id.* The Receiver permitted, as the Order
4 appointing the Receiver required, law enforcement to return to the
5 office to take pictures, review the related material, and to make
6 copies of the related computers and documents. See Dkt. No. 45 at 8.
7 Later, the Receiver voluntarily provided to the Department of Justice
8 material from Redwood's Google Suites account and QuickBooks
9 financial software, as such material was evidence of possible
10 fraudulent activity which caused the court to appoint the Receiver in
11 the first place. *Id.* at 17.

12 The Court provided the Receiver with authority to consent to law
13 enforcement searches and seizures and the Receiver's consent is an
14 exception to the warrant requirement under the Fourth Amendment.
15 Accordingly, the material lawfully obtained by USPIS should not be
16 suppressed.

17 **D. The Independent Source, Inevitable Discovery, Attenuation,**
18 **and Good Faith Doctrines All Apply If the Court Determines**
that There Was Any Illegal Conduct by Law Enforcement

19 Even if the Court found that USPIS somehow conducted an unlawful
20 search of the Redwood premises when it accompanied the Receiver and
21 the FTC in the court-ordered immediate access, no evidence
22 subsequently collected in the government's investigation should be
23 suppressed. Multiple Fourth Amendment doctrines would apply to the
24 government's subsequent evidence collection in its investigation of
25 Defendant and his company.
26
27
28

1 1. The FTC Would Have Produced the Documents to DOJ
2 Pursuant to Its Information Sharing Agreement.

3 The independent source exception permits the admission of
4 evidence that was discovered independently of a constitutional
5 violation. *Nix v. Williams*, 467 U.S. 431, 443 (1984). Such evidence
6 is not considered fruit of the poisonous tree because it was
7 discovered through independent legal means, even if it was separately
8 discovered through illegal conduct. *United States v. Ramirez-*
9 *Sandoval*, 872 F.2d 1392, 1396 (9th Cir. 1989); *Utah v. Strieff*, 579
10 U.S. 232, 237 (2016).

11 Here, the FTC was permitted to collect records from the Receiver
12 during the immediate access. Def. Supp. Mot. Ex. A-10. The
13 information sharing agreement between the FTC and USPIS indicates
14 that such material could be - and would have been - turned over to
15 law enforcement. Def. Supp. Mot. Ex. A-2 and A-3. In addition, the
16 separate information sharing agreement between the FTC and the
17 Department of Justice indicates that the material collected by the
18 FTC could also be turned over to the Department of Justice. Dkt. 45,
19 Ex. 29-30. Accordingly, even if USPIS presence during the immediate
20 access was considered an unlawful search, the USPIS did not seize any
21 evidence during that immediate access and all information and
22 material collected by the FTC could be turned over to both the USPIS
23 and the Department of Justice through the information requests.

24 2. Law Enforcement Would Have Inevitably Discovered the
25 Fraudulent Conduct from the Public Record of the FTC
26 Litigation.

27 The inevitable discovery exception permits the admission of
28 evidence that ultimately or inevitably would have been discovered by
lawful means. *Nix*, 467 U.S. at 444. The government must prove that

1 the relevant evidence would have been inevitably discovered by a
2 preponderance of the evidence. *Id.*

3 Here, the FTC in fact shared voluminous evidence it obtained
4 from Redwood with the Department of Justice. Moreover, the FTC's
5 litigation against Defendant and his company had over 900 docket
6 entries, many of which included the documents, information, and
7 affidavits evidencing the conduct Defendant was charged with in the
8 Indictment. *See generally FTC v. Cardiff, et al.* The Department of
9 Justice would have inevitably discovered this material from its
10 information sharing agreements with the FTC and from the public
11 filings in the FTC litigation, regardless of USPIS presence at the
12 immediate access. *Id.*

13 3. Attenuation

14 The attenuation exception permits the admission of evidence when
15 the connection between law enforcement's unlawful conduct and the
16 challenged evidence is remote or has been interrupted by some
17 intervening circumstance. *Utah v. Strieff*, 579 U.S. 232, 238 (2016).
18 The Supreme Court has articulated three factors that are relevant to
19 attenuation: (1) the temporal proximity between the unlawful conduct
20 and the discovery of the evidence, (2) the presence of intervening
21 circumstances, and (3) the purpose and flagrancy of the misconduct.
22 *Id.* at 239.

23 Defendant argues that law enforcement's presence at the October
24 12, 2018 immediate access taints the next four years of
25 investigation, to the point where interviews conducted by the
26 Department of Justice of the Receivership Entities' employees in
27 late-2020 through mid-2021 should be suppressed. *See generally* Def.
28 Supp. Mot. The breadth of Defendant's requested evidence suppression

1 highlights the absurdity of his argument and the fact that he is
2 seeking a second bite at the apple where this Court had already
3 rejected his request to suppress nearly all of the evidence collected
4 in the government's investigation of Defendant.

5 Law enforcement did not interview any employees during the
6 immediate access. Even if their presence during the immediate access
7 is considered a search, "substantial time elapse[d]" between the
8 alleged unlawful conduct and the discovery of evidence. *See Strieff*,
9 at 239. Also, the Department of Justice interviewed the Receivership
10 Entities' employees after many of their declarations and affidavits
11 were publicly filed in the FTC litigation. *See generally Redwood v.*
12 *Cardiff, et al.* The FTC litigation is an intervening circumstance
13 that would have brought the evidence to the Department of Justice's
14 attention.

15 Furthermore, law enforcement's presence at the Redwood premises
16 on October 12, 2018, provided them with no information regarding
17 Defendant's actions related to Counts 3 and 4 of the Indictment as it
18 relates to the destruction of documentation. Such information did not
19 come to light until the FTC interviewed Defendant's employees later.
20 In terms of flagrancy, law enforcement's mere presence at the Redwood
21 premises as per a Court order is in no way a flagrant violation of
22 law as such presence was explicitly permitted by the TRO.
23 Accordingly, each factor within the attenuation doctrine is met and
24 the motion to suppress should be denied.

25 4. Law Enforcement Acted in Good Faith

26 The good faith exception permits the admission of evidence when
27 law enforcement acts with an objectively reasonable good faith belief
28 that their conduct is lawful. *Davis v. United States*, 564 U.S. 229,

1 238-39 (2011). This exception recognizes that the high cost of
2 suppression is not warranted when law enforcement acts in good faith
3 or their conduct is merely negligent. *Id.* at 238-39.

4 Here, the temporary restraining order appointing the receiver
5 provided law enforcement a good faith basis to be in the Receivership
6 Entities' premises during the October 12, 2018 immediate access.

7 **III. CONCLUSION**

8 For the foregoing reasons, the Court should deny Defendant's
9 Motion to Suppress.